

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

BOBBY BANKS, et al.,

Plaintiffs,

v.

DIRECTV, LLC, et al.,

Defendants.

Case No. 1:14-cv-00398-LG-RHW

**PLAINTIFFS' RESPONSE
IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS**

COME NOW Plaintiffs, by and through their undersigned attorneys of record, for their Response in Opposition to Defendants' Motions to Dismiss (Docs. 23, 25, 27) and states to the Court as follow:

1. Plaintiffs' First Amended Complaint (Doc. ("Complaint")) properly alleges that DIRECTV is an "employer" under the Fair Labor Standards Act ("FLSA") for each of the plaintiffs who have joined their claims in this case. For certain of the plaintiffs, the Complaint properly alleges that both Multiband and DIRECTV were "employers" under the FLSA. The Complaint provides page after page of detail about the "economic reality" of the employment relationship between the plaintiffs and defendants.

2. The Complaint also sets forth allegations that state plausible claims under the FLSA for unpaid overtime and minimum wages for each of the plaintiffs. While some global averages are presented in order to give context to the pleading, damages for FLSA

claims are evaluated on a week-by-week basis. When read as a whole, the Complaint states a plausible minimum wage claim for each Plaintiff.

3. Defendants ignore the fact that Plaintiffs' Complaint alleges an intentional fissured employment scheme designed to allow DIRECTV to disclaim liability for its technicians, including Plaintiffs. The Complaint also has a number of other allegations explaining why the alleged violations are willful. Notwithstanding the substantive sufficiency of the pleading, however, Defendants' statute of limitations arguments seek premature rulings on the affirmative defense upon which *Defendants* bear the burden.

WHEREFORE, based on the above and the reasons more fully explained in the accompanying memorandum, Plaintiffs pray the Court overrule and pending motions and for such and further relief as the Court deems proper.

Dated: May 8, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on all attorneys of record via the Court's electronic case filing system on May 8, 2015.

/s/ Todd C. Werts

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